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U.S. Citizenship
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Services

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MAY 19 2004

FILE: SRC 02 169 50579 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a wholesale live seafood distribution company. It seeks to employ the beneficiary as an office manager. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position does not appear to be a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and the beneficiary's duties are parallel to that of a market researcher or marketing manager.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letter of support; (3) the director's request for additional evidence; (4) counsel's letter, dated October 9, 2002, that responds to the director's request; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an office manager. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letters in support of the petition and in response to the director's request for further evidence. According to the initial petition, the beneficiary would be responsible for managing the financial and accounting records of the company, including accounts receivable and payable, for credit and bill collection, for the requisition of supplies, and other clerical services. She would also provide a full range of administrative and secretarial support services to the general manager or partners of the company. Finally, the petitioner would be actively assisting and supporting the sales and marketing department.

In the petitioner's response to the director's request for further evidence, the petitioner then stated that the beneficiary would analyze and organize office operations and procedures in areas such as accounting and book keeping, and that 50 per cent of the beneficiary's time would be devoted to sales and marketing. In this marketing capacity, she would develop and implement marketing objectives, strategies, and program designs to increase sales and profit. According to the petitioner, a final duty would be to analyze and organize the flow of correspondence, in part, by establishing correspondence procedures and style practices. The petitioner indicated that the position required a minimum of a bachelor's degree and one year of experience in general administrative marketing and sales. The petitioner indicated that course work in accounting and market management as well as work experience in customer services and marketing was required.

The director found that the proffered position of office manager was not a specialty occupation and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of office and administrative support supervisory and managerial positions. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the beneficiary's duties are both specialized and complex, and that the beneficiary's job functions in sales and marketing are parallel to that of a market researcher or marketing manager, both positions that are normally associated with a bachelor's degree or higher. Counsel submits excerpts from the *Handbook* on market research analysts and management analysts.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the proffered position, the petitioner submitted new duties for the position in its response to the director's request for further evidence. For example, in the original job description, the beneficiary was assisting and supporting the sales and marketing department. In description of the position submitted in response to the director's request for further evidence, the petitioner described the beneficiary as spending 50 per cent of her time developing and implementing marketing objectives, strategies, and program designs to increase sales and profit. Furthermore, on appeal, counsel describes the position as parallel to a market researcher or market manager.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. In the instant petition, the petitioner significantly changed the duties and the level of responsibility of the proffered position. For this reason, only the initial job description will be examined in this proceeding. The duties contained in the original job description are found to be those of an office manager with major responsibilities in the accounting, bookkeeping, and administrative support areas. As correctly noted by the director, the *Handbook* indicates that positions such as administrative supervisors or managers do not require a baccalaureate degree in a specific specialty for entry into the job. Without more persuasive evidence, the petitioner has not established that a baccalaureate degree in a specific specialty is required for entry into the proffered position.

With regard to parallel positions in similar firms, the petitioner submitted no further documentation on office managers employed in similar wholesale distribution companies. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner stated that it had twenty full-time employees; however, it provided no further information about any previous office managers and their academic credentials. Therefore the petitioner has not met this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As previously stated, only the duties of the original job description are examined in this proceeding. To the extent that they are depicted in the record, the duties of the position appear administrative, clerical and with regard to any accounting or bookkeeping duties, detail-oriented. However, the record does not establish that the nature of these duties is necessarily so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.